

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 8:03-CR-77-T-30TBM

HATEM NAJI FARIZ
_____ /

OBJECTIONS TO PROPOSED JUROR QUESTIONNAIRE

Defendant, Hatem Naji Fariz, by and through undersigned counsel, respectfully objects to the following portions of the Court's proposed Juror Questionnaire (attached as Attachment A) and as grounds in support thereof would show:

Defendants' Proposed Modifications to the Juror Questionnaire

Mr. Fariz reasserts his previous requests to amend the juror questionnaire filed with the Court. (Doc. 1514). The defense did not request sweeping changes of the original questionnaire, reflecting the fact that the Court's original questionnaire had functioned well in seating jurors who would examine the case based solely on the evidence presented in court and not be swayed by public sentiment or the media coverage of the case. Instead, Mr. Fariz had submitted changes largely reflecting the media coverage of the first trial and its outcome. Mr. Fariz believes that a questionnaire for the retrial remains an essential tool in identifying potential bias and prejudice, particularly in light of the continuing and even increased media coverage throughout and after the first trial. The questionnaire, however, unlike how the government treated it in their requested changes (Doc. 1513), is not designed to help the government find a favorable jury, but an impartial one. *See United States v. Brunty*, 701 F.2d

1375, 1379 (11th Cir. 1983) (“A [party] is not entitled to a sympathetic jury; merely an impartial one.”); *United States v. Noone*, 913 F.2d 20, 34 n.19 (1st Cir. 1990) (citing *Bruntz*).

General Instructions

Given the potential intrusiveness of the questionnaire (particularly as now amended if the Court maintains the government’s proposed changes), the original language advising the jurors of the opportunity to discuss privately answers too personal for the questionnaire should not be omitted. Additionally, the cautionary statement advising that the fact that a question is asked does not imply that the subject is an issue in the case should not have been omitted. Finally, the paragraph which advises the jurors that an indictment is merely an accusation is essential to this process and should be reinserted in the official questionnaire.

Juror’s Oath

There is no sound basis for placing the Juror’s Oath before the questions as propounded. The government makes this request based on an assertion that their review of the local media after trial “indicates that some jurors may not have understood their obligation to be completely forthcoming in their responses to the original questionnaire.” (Doc. 1513, Attachment A at 2). The government’s request for placement of the juror’s oath at the beginning of the questionnaire is based on an unfounded and demeaning premise that the previous jurors were too ignorant or dishonest to appreciate the gravity of the questionnaire and respond appropriately. Indeed, a review of the government’s submission as a whole reveals that the government rather insultingly blames the outcome of the first trial on the fact that the jurors lied (*id.* at 2), were not smart enough or did not have the ability to

concentrate for long periods of time (*id.* at 3), and were prejudiced (*id.* at 15-16, 26-27). The placement of the signature line at the close of a legal document is a universally accepted principal. The importance of the questionnaire has already been stated in the General Instructions and is sufficiently explained there.

Counsel for Mr. Fariz reasserts the need to advise the jurors of a trial that may last as few as two or as many as six months. There are a number of factors that could affect the length of the trial. For example, the government has announced that they are attempting to streamline the case, but even they have described the process of streamlining as complex. It therefore remains to be seen whether the government will be able to present a shorter case-in-chief. In addition, at the present time, counsel for Dr. Al-Arian has moved to be allowed to withdraw from the case. The assertion that a retrial of a six-month trial could be done in two months presupposes a similar defense approach to the presentation of the government's case. Weeks of testimony, as represented to the Court by counsel for the government, were saved through various stipulations. Said stipulations may not be entered into again. The decision by counsel for Dr. Al-Arian not to present a defense may have saved days, weeks or months. Out of an abundance of caution, it is preferable to select a jury capable of serving six months and ending early as opposed to selecting a jury expecting to serve two months and holding them over by months.

Questions 4 and 5

Questions 4 and 5 are improper in light of the context of this case. The first jury sat for six months, took voluminous notes, had the benefit of summary witnesses, were provided

access to all the evidence (including each juror being provided his or her own copy of the FISA translations), were provided (over defense objection) the government's exhibit list with cross-references to counts and overt acts, reviewed the evidence for weeks while deliberating, and returned verdicts without any substantive questions. The government's request for the inclusion of these questions is insulting and impugns the work of the first jury. If any blame can be assessed concerning the jury's ability to concentrate, it should, as the Court repeatedly commented about, reflect the pace of the prosecution's case-in-chief. Had the government sought such questions in the original questionnaire, the questions would not have seemed objectionable at the time. In light of the present context, however, the questions insult the first jury, sending an unwarranted and negative signal to the remaining jury pool.

Should the Court decide to leave such inquiries in the questionnaire, Mr. Fariz would suggest omitting Questions 4 and 5 and rewording Question 3 to read, "Are you taking any prescription medication *or have any other condition* that may interfere...."

Question 10(b)

Question 10(b) is improper. The issue of whether television newscasts are or are not biased has no relevance in this case. The purpose of voir dire is to identify potential bias on the part of the jurors. Whether they believe television newscasts are biased, the extent of the bias, and whether it raises any specific concerns demonstrates nothing.

Question 13

Question 13 in its entirety is improper. The series of questions concerning the jurors' use of computers is both irrelevant and highly intrusive. If, when, how often and for what purpose a juror uses a personal computer is irrelevant to the inquiry into a juror's potential bias. Even if the responses could demonstrate the juror's personal knowledge of the workings of a computer and/or the internet, such a revelation demonstrates nothing of relevance to making cause challenges, the Court's purpose for using a questionnaire. Moreover, the questions asked delve into areas which may require a juror to implicate himself or herself in activities that violate workplace regulations or policy or, in some instances, laws concerning gambling, pornography or internet piracy.

Question 17(b)

Question 17(b) is an improper question. The question implies that a juror with knowledge of Arabic or Hebrew should rely on a translator's version of the evidence. A translator is like any other witness whose testimony can be accepted wholly, accepted partially, or rejected outright. This question invades the province of the jury to determine the accuracy of the translations as instructed. (Doc. 1431, Jury Instruction Nos. 9 and 10).

Question 25

Question 25 is improper in its current form. Counsel for Mr. Fariz do not object to voir dire concerning a juror's potential biases concerning INS/BICE or immigration policy, as one of the sub-questions asks (see bottom of page 11). It is, however, improper to insert what are essentially attempts to place the juror in the position of the accused and ask the juror

to judge a potential response based on facts derived from the first trial. In other words, the government, by requesting such questions, has essentially attempted to test what they believe to be the defense's theory of the case in the questionnaire. Furthermore, the questions concerning the juror opinion concerning INS/BICE enforcement policies is irrelevant, misleading and confusing in that it asks the juror to select one of three positions that are not in and of themselves mutually exclusive. Accordingly, Mr. Fariz objects to Question 25, except for the last question on page 11. Mr. Fariz would request that the explanation inquiry simply state "Please explain," instead of omitting the request for an explanation of a "No" answer.

Questions 27(a) and (b)

Questions 27(a) and (b) are improper. The questions, again, do nothing to reveal potential biases that would exclude a juror from service in the instant case. Instead, they place the juror in the position of the accused and ask the juror to judge a potential response based on facts derived from the first trial. Again, the government is attempting to test the defense's theory of the case, which is an improper use of a juror questionnaire.

Questions 34-38

Questions 34 through 38 are improper in their current form. The questions are facially and inherently uneven. Notably, for example, while the original and new questionnaire inquire about whether the potential juror would be biased against a Muslim defendant in a case alleging support for people and organizations that the government has designated as terrorists (Question 34), the government now wants to ask would the potential

juror be unable to be fair and impartial because of their feelings toward Jews or Israelis in a case “involving violent crimes committed against Jewish people or Israelis.” (Question 38).¹ The potential for bias for or against an individual or group of Muslims, Palestinians, Arabs, Jews or Israelis should be pursued evenly and without the appearance of demonizing one group and victimizing another.

Further, the questions as now proposed by the government inquire into biases for or against Muslims and only against (not for) Jews or Israelis. The government’s proposal therefore does not treat the groups evenly.

Mr. Fariz would request:

(1) Question 34 remain the same.

(2) Question 35 should be omitted. Question 35 is irrelevant. It does nothing to show bias. Whether someone has a pleasant experience with someone does not reflect bias. Moreover, the government did not ask the same question with respect to pleasant experiences with Jews or Israelis.

(3) Question 36 should be amended. First, the underlined words should not be emphasized (Compare Question 34). Second, the question should be reworded to be facially evenhanded, asking whether the potential juror would be biased “in favor of or against” the

¹ Mr. Fariz would further observe that while Question 34 recognizes that the charges are “allegations,” Question 38 does not. Question 38 presupposes an element of the charges. All four defendants, however, were acquitted of the conspiracy to murder. Mr. Fariz objects to the characterization of the charges in Question 38.

defendant or biased “in favor of or against” the government. Additionally, the juror should be asked to explain a “No” answer as well.

(4) Question 37 should be reworded to parallel Question 33 by asking if the juror has had “unpleasant” experiences with Jewish people or Israelis.

(5) Question 38 should be reworded to read:

Do you feel that any of your experiences with or feelings towards Jewish people or Israelis, or associated organizations, would cause you to be biased for or against a Muslim, Palestinian or Arab defendant or biased for or against the government in a case involving a Muslim, Palestinian or Arab defendant?

_____ Yes _____ No _____ I am not sure

Please explain:

Alternatively, should the Court decide to leave Question 38 as it is,² Mr. Fariz would request that the Court add the following question after Question 38:

Do you feel that any of your experiences with, or feelings or impressions about, Palestinian people would make it difficult for you to listen to the evidence with an open mind and render a verdict based solely on the evidence presented in Court in a case involving violent crimes committed against the Palestinian people?

_____ Yes _____ No _____ I am not sure

Please explain: _____

² Mr. Fariz would request that the juror be asked to explain a “No” answer as well.

Questions 39 and 40

To clarify, these questions should include follow-up questions of:

If Yes, which group? _____ What gives you that impression?

Question 42

The defense would request the addition of the following question:

Do you think that Palestinians are responsible for any attacks on the United States?

Yes _____ No _____ If Yes, which attacks? _____

Question 46

Question 46 is incomplete. If the parties are to determine what the jurors do or do not know of the first trial, all defendants, including Ballut and Hammoudeh, should be listed. Additionally, there is no reason to ask the questions concerning knowledge of the case and their discussion of the case in the disjunctive. The question is poorly worded. Accordingly, Mr. Fariz would request that the question be amended to ask:

Have you, or has anyone close to you, seen, heard, or read anything about the prior federal trial involving Dr. Sami Amin Al-Arian, Sameeh Hammoudeh, Ghassan Ballut, and Hatem Fariz?

_____ Yes
_____ No³

Sub-question (d) is improper. In its place, an open-ended question would be more appropriate. Mr. Fariz would therefore stand by his original request for, “What was your

³ The government’s proposed responses of “Yes, self” and “Yes, someone close” are confusing in this and other questions. Mr. Fariz would recommend simply Yes or No.

reaction to the verdicts?” Should the Court maintain the question as it is, it inexplicably leaves out the request for an explanation if the jury did not agree with the verdict. Such an inquiry should be made.

A final question should be added:

Do any of your reactions, opinions, or impressions about the verdict affect your ability to be fair and impartial in this case?

Yes _____ No _____ Please explain: _____

Question 47

Question 47 is misleading. The questions would tend to reflect the juror’s reaction to the first trial. The questions, however, do not completely and accurately describe the specific situation of this case. Question 47(a), to be relevant, should accurately reflect the instant case and ask the juror’s feelings about a retrial in which the first jury acquitted a defendant of 25 of 35 counts and failed to reach a unanimous decision on the remaining counts, and then should allow for a discussion of a juror’s feelings whether they believe it to be fair or not. The present question is not concerned with identifying an unbiased juror; it is solely concerned with identifying jurors who do not think the retrial is unfair. Question 47(b) is equally one-sided, seeking an explanation of the jurors’ views only if they believe a retrial to be a waste of taxpayer dollars. Question 47(c) is patently irrelevant. Question 47(d) again demonstrates a question not designed to identify inherent bias but to identify individuals who have a concern with the retrial.

In place of Question 47, Mr. Fariz would request the questions the defense submitted which are much more open-ended:

What is your reaction to the government's decision to retry Dr. Al-Arian?

What is your reaction to the government's decision to retry Mr. Fariz?

In addition, the following question should be added to determine impartiality:

Do any of your reactions, opinions, or impressions about the retrial of this case affect your ability to be fair and impartial in this case?

Yes _____ No _____ Please explain: _____

Question 52

Question 52 is confusing. In the original questionnaire, the jurors were asked about their knowledge of pre-trial rulings in the instant matter. In its present form and placement, the question appears to be concerned with the jurors' knowledge of rulings related to the Al Najjar matter (See Question 51). Mr. Fariz's proposed questions identifying "this case" as the instant matter and expanding the question to include the jury's knowledge of not only pre-trial rulings but also trial and post-trial rulings is the appropriate inquiry. Mr. Fariz therefore stands by his earlier requests. (Doc. 1514).

Questions 56 through 58

Mr. Fariz objects to the inclusion of these questions as not reflective of bias in this case. Instead, the questions attempt to test the jurors' views on the United States' policy in

the Middle East and the United States' positions on the Israeli-Palestinian conflict. Such questions are not proper or relevant.

Question 76

Question 76 is improper. The questions involved do nothing to identify bias that may affect a juror's ability to be fair and impartial in the instant case. The specific forms of discrimination listed have absolutely no relevance to the instant case.

Question 84(a) and 85(a)

Questions 84(a) and 85(a) are improper. The follow-ups to the substantive questions do not identify bias; instead, they attempt to rephrase the question in a manner that insulates the government's actions regardless of possible overreaching and illegal wiretaps. These questions are particularly inappropriate until such time as the government responds to the defendants' request for disclosure of unwarranted wiretaps in the instant case.

Question 86

Question 86 is improper. It invades the province of the jury in that it attempts to establish the reliability of certain evidence. This question is another unabashed attempt to poll the jury in order to identify a favorable jury. Such use of voir dire is inappropriate. As previously stated, voir dire is appropriately effected when utilized to identify biases which may affect the due process rights of an accused or the legitimacy of the proceeding.

Accordingly, Mr. Fariz submits the foregoing objections and responses to the Jury

Questionnaire (Attachment A).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of February, 2006, a true and correct copy of the foregoing has been furnished by CM/ECF, to Walter Furr, Assistant United States Attorney; Terry Zitek, Assistant United States Attorney; Cherie L. Krigsman, Trial Attorney, U.S. Department of Justice; Alexis L. Collins, Trial Attorney, U.S. Department of Justice; and to William Moffitt, Esq. and Linda Moreno, Esq., counsel for Dr. Al-Arian.

/s/ M. Allison Guagliardo
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